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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Mississippi

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLAN FOR MEDICAL ASSISTANCE

The material that follows in Supplement 1 to Attachment 4.34-A, pages 1 - 10, is contained in pamphlet form and is distributed by the applicable providers at the time specified in paragraph 4.13 to those individuals under their care. The pamphlet contains the essential elements of State law on advance directives and prescribes implementing forms that comply with the requirements of the law.

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### INTRODUCTION

In general, you have the right to make health care decisions, including decisions as to nursing home care, for yourself. Under the law, a patient must consent to any treatment or care received. Generally, if you are a competent adult, you can give this consent for yourself. In order for you to give this consent, you should be told what the recommended procedure is, why it is recommended, what risks are involved with the procedure, and what the alternatives are.

If you are not able to make your own health care decisions, your advance directives can be used. An "advanced directive" can be a Living Will, a Durable Power of Attorney for Health Care, or other evidence of your wishes concerning health care decisions.

A Living Will is a directive to be allowed to die naturally. The Living Will comes into play only when your attending physician, along with 2 other physicians, believes that you will not regain consciousness or a state of health that is meaningful to you and but for the use of life-sustaining mechanisms, you would soon die. The Living Will must be in substantially the form set forth in the back of this pamphlet.

A "Durable Power of Attorney for Health Care" ("DPAHC") is a document where you designate someone as your agent to make health care decisions for you if you are unable to make such a decision. The DPAHC comes into play when you cannot make a health care decision either because of a permanent or temporary illness or injury. The DPAHC must specifically authorize your attorney in fact to make health care decisions for you and must contain the standard language set out in the law. This language is included in the of DPAHC form at the back of this pamphlet. Otherwise, the DPAHC can contain any instructions which you wish.

If you are unable to make decisions and have not left a Living Will or DPAHC, members of your family may make decisions for you. Family members, however, may disagree among themselves or with the physician. In these instances, a Living Will or DPAHC may help to clarify the decisions and who can make them.

The law on making health care decisions and advance directives is discussed in this pamphlet in detail in wording that we hope makes it easy for you to read. Please read the entire pamphlet.

### YOUR RIGHT UNDER MISSISSIPPI LAW TO MAKE DECISIONS CONCERNING HEALTH CARE

The Patient Self Determination Act of 1990 (the "PSDA") is a new federal law which imposes on the State and providers of health care -- such as hospitals, nursing homes, hospices, home health agencies, and prepaid health care organizations -- certain

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requirements concerning advance directives and an individual's rights under State law to make decisions concerning medical care. This pamphlet will discuss your rights under state law to make health care decisions and set out a description of the Mississippi law on advance directives.

What Are My Rights to Accept or Refuse Treatment or Care?

In general, you have the right to make health care decisions, including decisions as to nursing home care, for yourself, if you are 18 or older and are competent.

What Information Must I Be Told To Give My Consent?

The physician should explain to you the pertinent facts about your illness and the nature of the treatment in nontechnical terms which are understandable to you. The physician also should explain to you why the proposed treatment is recommended.

The physician should inform you of all reasonable risks and material consequences or "side effects" associated with the proposed treatment.

Finally, the physician must tell you about any other types of treatment which you could undergo instead. The nature, purpose, and reasonable risks, and consequences of these treatments should be explained to you.

With this information, you can then make your health care decision.

What If I am Unable to Make These Decisions?

If you cannot make a health care decision because of incapacity, your advance directive, such as a Living Will or Durable Power of Attorney for Health Care, can be used. If you have not signed an advance directive, a family member may make the decision, or a court may have to make the decision for you.

A. LIVING WILLS

What is a Living Will?

A Living Will is a directive to be allowed to die naturally. Through the Living Will, you authorize your physician to withdraw life-sustaining mechanisms under certain circumstances. The Living Will comes into play only when you suffer a terminal physical condition which causes you severe distress or unconsciousness and but

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for the use of life-sustaining mechanisms, you would soon die.

What Must the Living Will Say?

The Living Will must be in substantially the form set forth in the Mississippi Code and properly witnessed. A copy of this form is included in the Form section in the back of this pamphlet.

Must the Living Will be Filed?

The Living Will must be filed, along with \$10, with the Division of Public Health Statistics of the Mississippi State Department of Health.

How Can a Living Will be Revoked?

The Living Will, once filed, is valid until revoked. You may revoke a Living Will by signing a revocation in substantially the form set forth in the statute. The revocation must be signed by witnesses and filed with the Division of Public Health Statistics of the Mississippi State Department of Health. No filing fee is charged for the filing of a revocation of a Living Will. A copy of the revocation form is included in the back of this pamphlet.

What If I am Unable to Follow This Procedure?

If you wish to revoke a Living Will but are unable to sign a form, a clear expression by you, oral or otherwise, of your wish to revoke the Living Will is effective.

What Happens When it is Time to Use the Living Will?

Your attending physician, along with 2 other physicians, must believe that you will not regain consciousness or a state of health that is meaningful to you and but for the use of life-sustaining mechanisms, you would soon die. Then the physician in charge must get a copy of your Living Will and make sure it has not been revoked. Once this has been done, the life-sustaining mechanisms will be withdrawn.

Will My Living Will Be Followed?

Your Living Will is to be honored by your family and physician as the final expression of your desires concerning the manner in which you die.

A physician, hospital, nursing home, or other provider, however, has the right to refuse to follow your Living Will. But a provider not honoring your Living Will must cooperate in your transfer to another provider that will follow your Living Will.

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Upon admission, you should receive a copy of the facility's policies concerning advance directives. You should review these policies and determine whether or not the facility will follow your Living Will.

Should I Give My Physician a Copy of My Living Will?

Yes. A copy also should be given to any other provider, such as a hospital, home health agency, or nursing home, from which you are receiving care.

B. DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

What is a Durable Power of Attorney for Healthcare?

You may designate an individual as your agent (or "Attorney In Fact") to make health care decisions for you if you are unable to make such a decision because of a permanent or temporary illness or injury. The document authorizing this action is the Durable Power of Attorney for Health Care ("DPAHC").

What Must the DPAHC Contain?

The DPAHC must be properly witnessed, must specifically authorize your Attorney In Fact to make health care decisions for you, and must contain the standard language set out in the law. This language is included in the DPAHC form at the back of this pamphlet. Otherwise, the DPAHC can contain any instructions which you wish.

What Should I Do With the DPAHC?

The DPAHC does not need to be filed. You should keep the DPAHC for yourself and give a copy to the Attorney In Fact you named in the DPAHC. A copy should also be given to your physician to make a part of your medical records. You should also give a copy to any other provider from which you are receiving care, such as a nursing home, hospital, or a home health agency. You may also want to provide a copy to your clergy, family members and friends who are not named in the documents.

Who Will Decide if I Cannot Act and My Attorney In Fact Should Act for Me?

You can name a physician in the DPAHC to make this determination. You also can specify how incapacity and mental status is to be determined if the need should arise. If no instructions are provided, then "generally accepted standards" will normally apply.

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Who Can Act As My Attorney In Fact?

Neither a treating health care provider nor an employee of a treating health care provider may be named as your Attorney In Fact. Otherwise, any person, such as a family member or a friend, may act as the Attorney In Fact. The Attorney In Fact does not need to be a lawyer.

What are the Powers of My Attorney In Fact?

Your Attorney In Fact has whatever power you give in the DPAHC to make health care decisions for you. "Making health care decisions" means consenting, refusing to consent or withdrawing consent to any care, treatment, service or procedure to maintain, diagnose or treat your physical or mental condition. This includes decisions as to nursing home care as well as decisions as to medical treatment.

Are There Limitations on the Power of My Attorney In Fact?

Your Attorney In Fact has a duty to act according to what you put in the DPAHC or as you otherwise have made known to him or her. If your desires are unknown, he or she must act in your best interest. Your Attorney In Fact cannot make a particular health care decision for you if you are able to make that decision.

What if Someone Other Than the Attorney In Fact Wants to Make Health Care Decisions for Me?

Unless the DPAHC says otherwise, your Attorney In Fact has priority over any other person to act for you.

Will a Health Care Provider Recognize My Attorney In Fact's Authority?

In general, yes. Special rules, however, may apply when life-sustaining treatment is at issue.

Upon admission, you should receive a copy of the facility's policies on advance directives. You should review these policies and determine whether or not the facility will follow your DPAHC.

Can My DPAHC be Changed?

You can change your Attorney In Fact by telling him or her of the change, or you can revoke the authority to make decisions by notifying the health care provider in writing. In order to make either of these changes, you must be of sound mind.

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C. GENERAL

What If I Have a Living Will or DPAHC I Signed When Living in Another State?

To be binding, these documents must meet Mississippi law. Many out-of-state documents will not meet these requirements. The safest route is to execute new documents following the Mississippi statute.

Do I Need Both a Living Will and DPAHC?

A Living Will and a DPAHC are distinct documents. They serve different purposes.

A Living Will applies only if you are about to die. It instructs your physician to discontinue life support if your condition is terminal and you have become incompetent.

A DPAHC allows you to pick another person to make your health care decisions for you whenever you are unable to make those decisions yourself.

You should discuss with your lawyer the advisability of having either or both documents in place.

What Other Documents Should Be Considered?

The Living Will and DPAHC are the only documents recognized in Mississippi by statute. However, depending upon particular circumstances, the state may recognize other health care directives or indications of your desires concerning health care. You also should discuss these options with your lawyer.

Can I Let My Family Make These Decisions?

Members of your family may make decisions for you if you are unable to do so and have not left a Living Will or DPAHC. Family members, however, may disagree among themselves or with the physician. In these instances, a Living Will or DPAHC may help to clarify the decisions and who can make them.

When Will a Court Make This Decision?

As a final resort, if someone authorized to consent for you has refused or declined to do so and there is no other person known to be available who is authorized to consent, a court may order treatment for you if you are not able to do so.

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LIVING WILL FORM

**Declaration**

I, \_\_\_\_\_ being of sound mind, declare that if at any time I should suffer a terminal physical condition which causes me severe distress or unconsciousness, and my physician, with the concurrence of two (2) other physicians, believes that there is no expectation of my regaining consciousness or a state of health that is meaningful to me and but for the use of life-sustaining mechanisms my death would be imminent, I desire that the mechanisms be withdrawn so that I may die naturally. However, if I have been diagnosed as pregnant and that diagnosis is known to my physician, this Declaration shall have no force or effect during the course of my pregnancy. I further declare that this Declaration shall be honored by my family and my physician as the final expression of my desires concerning the manner in which I die.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Social Security Number \_\_\_\_\_

Address \_\_\_\_\_

Next of kin \_\_\_\_\_

Address \_\_\_\_\_

**Witness**

I hereby witness this Declaration and attest that:

1. I personally know the Declarant and believe the Declarant to be of sound mind.
2. To the best of my knowledge, at the time of the execution of this Declaration, I:
  - a. Am not related to the Declarant by blood or marriage,
  - b. Do not have any claim on the estate of the Declarant,
  - c. Am not entitled to any portion of the Declarant's estate by any will or by operation of law,
  - d. Am not a physician attending the Declarant or a person employed by a physician attending the Declarant.

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

Social Security Number \_\_\_\_\_ Social Security Number \_\_\_\_\_



LIVING WILL REVOCATION

**Revocation**

On \_\_\_\_\_ (date), I \_\_\_\_\_ (person's name), of \_\_\_\_\_  
\_\_\_\_\_, (address), \_\_\_\_\_ (Social Security Number), being of sound mind, revoke  
the Declaration made on \_\_\_\_\_ (date Declaration made) regarding the manner in which I die.  
Signed \_\_\_\_\_

**Witness**

I hereby witness this Revocation and attest that:

1. I personally know the maker of this Revocation and believe the maker of this Revocation to be of sound mind.
2. To the best of my knowledge, at the time of the execution of this Revocation, I:
  - a. Am not related to the maker of the Revocation by blood or marriage,
  - b. Do not have any claim on the estate of the maker of this Revocation,
  - c. Am not entitled to any portion of the maker of this Revocation's estate by any will or operation of law, and
  - d. Am not a physician attending the maker of this Revocation or a person employed by a physician attending the maker of this Revocation.

Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
Social Security Number _____	Social Security Number _____

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DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, \_\_\_\_\_ hereby appoint:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Work Telephone Number

\_\_\_\_\_  
Home Telephone Number

my attorney-in-fact to make health care decisions for me if I become unable to make my own health care decisions.

Subject to my special instructions below, this gives my attorney-in-fact the full power to make health care decisions for me, before or after my death, to the same extent I could make decisions for myself and to the full extent permitted by law, including making a disposition under the state's anatomical gift act, authorizing an autopsy, and directing the disposition of remains. My attorney-in-fact also has the authority to talk to health care personnel, get information and sign forms necessary to carry out these decisions.

Special Instructions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the person named as my attorney-in-fact is not available or is unable to act as my attorney-in-fact, I appoint the following person to serve in his or her place:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Work Telephone Number

\_\_\_\_\_  
Home Telephone Number

By my signature I do hereby indicate that I understand the purpose and effect of this document.

\_\_\_\_\_  
SIGNATURE

DATE: \_\_\_\_\_

The law requires that this document be either (1) signed by two persons who witnessed your signature, or (2) acknowledged by a Notary Public in Mississippi. Therefore, one of the sections below must be completed.

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SECTION 1. WITNESSES

I declare under penalty of perjury under the laws of Mississippi that the principal is personally known to me, that the principal signed or acknowledged this Durable Power of Attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not a health care provider, nor an employee of a health care provider or facility.

FIRST WITNESS

SECOND WITNESS

Signature \_\_\_\_\_ Signature \_\_\_\_\_  
Print Name \_\_\_\_\_ Print Name \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

At least one of the witnesses listed above shall also sign the following declaration:

I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
SIGNATURE

SECTION 2. NOTARY PUBLIC

State of Mississippi

County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me \_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

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